

REMARKS

Applicant has carefully studied the Final Office Action of June 14, 2005 and offers the following remarks to accompany the above amendments.

The Patent Office requested that the specification be updated to reflect the current status of the parent application. Applicant herein amends the specification to provide the requested information. No new matter is added.

Claims 1 and 4-14 were rejected under 35 U.S.C. § 102(e) as being anticipated by Hsu. Applicant respectfully traverses. For the Patent Office to prove anticipation, the Patent Office must show where each and every element of the claims is located. Further, the elements of the reference must be arranged as claimed. MPEP § 2131.

Applicant previously argued that Hsu did not teach "moving processing of said given channel to a different one of said plurality of processors. . ." (see page 6 of the Response filed April 21, 2005). In the "*Response to Arguments*" the Patent Office responds (Office Action of June 14, 2005, page 9, paragraph 27) that "moving processing" does not indicate that a task is offloaded to another processor. While the Patent Office asserts that this interpretation is supported by Applicant's specification, Applicant traverses the assertion. Specifically, Applicant's specification at page 9, line 15-page 10, line 14 teaches that the channel is offloaded to another processor. Specifically, "the assume channel" command allows the second processor to take over processing of the channel. While the assume channel command is in response to a new task, the task is still associated with a particular communication flow. Thus, a single call could be handled by multiple processors as the tasks within the call require different optimizations. In contrast, Hsu only evaluates if the current processor is sufficient when there is a new incoming call (see col. 13, lines 6-28). The claims recite reallocation based on tasks, not based on calls. Since Hsu assigns new processors to new calls, Hsu does not teach moving processing as recited in the claims. Since Hsu does not teach or suggest this element, Hsu does not anticipate claim 1. Since claim 1 is not anticipated, claims 4-8 are likewise not anticipated.

Likewise, claim 9 recites that certain events happen when a task changes to a new channel processing task. The Patent Office opines that this element is taught at Hsu, col. 13, lines 6-42. However, Hsu performs his changes when a new call comes in, not when a new channel processing task occurs. Thus, Hsu does not anticipate claim 9.

Claim 10 likewise recites that the association is based on tasks, not on a new incoming call as taught by Hsu. Thus, claim 10 recites an element that is not taught or suggested by Hsu, and Hsu does not anticipate claim 10. Since claim 10 is not anticipated, claims 11-14 are likewise not anticipated.

Applicant requests withdrawal of the § 102(e) rejection of claim 1 and 4-14 at this time.

Claim 2 was rejected under 35 U.S.C. § 103 as being unpatentable over Hsu in view of Weiss et al. (hereinafter "Weiss"). Applicant respectfully traverses. For the Patent Office to combine references in an obviousness rejection, the Patent Office must do two things. First, the Patent Office must set forth a motivation to combine the references, and second, the Patent Office must support the articulated motivation with actual evidence. *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999). That is, most inventions are combinations of older elements, but what makes those inventions patentable is that there was no suggestion to combine the older elements in the manner claimed. To prevent hindsight reconstruction, wherein the Patent Office uses Applicant's disclosure as a template to pick and choose elements from the prior art and assemble these elements into the claimed invention, the Federal Circuit requires that the Patent Office demonstrate, through the use of actual evidence why someone skilled in the art would have, without the benefit of Applicant's disclosure, combined the prior art into the claimed invention. Merely because combinations could be made or that combinations are within the skill of those skilled in the art does not mean that the combination is obvious. MPEP § 2143.01.

Applicant previously argued that the Patent Office had not properly supported the motivation to combine Hsu and Weiss. The Patent Office responds by stating "it hardly seems appropriate to reconstruct the entire development of the technology of DSPs in order to support an obviousness motivation when the level of ordinary skill in the art is apparent from the Weiss reference itself." (Office Action of June 14, 2005, page 10, lines 13-15). Applicant has not asked the Patent Office to perform the alleged reconstruction. Applicant merely requests that the Patent Office comply with the instructions set forth by the Federal Circuit that require actual evidence that proves that someone would be motivated to combine the references. Specifically, Applicant requests that the Patent Office show where there is any evidence that suggests increasing the efficiency of the system through predictive assignment is desirable and that keeping a history buffer allows for predictive assignment. Absent such proof, the Patent Office is merely stating that the references can be combined. MPEP § 2143.01 clearly indicates that

merely because a combination is possible does not establish obviousness. There must be some demonstrable motivation to combine the references. Since the Patent Office has not provided the requisite evidence, the combination is improper. Since the combination is improper, the rejection based on the combination is improper, and Applicant requests withdrawal of the rejection of claim 2 at this time.

Even if the combination is proper, a point which Applicant does not concede, the combination does not establish *prima facie* obviousness because the combination does not teach or suggest each and every claim element. MPEP § 2143.03. Specifically, as noted above, Hsu does not teach moving processing of a given channel to a different processor. Weiss does not cure this deficiency. Since the references individually do not teach or suggest the claim element, the combination does not teach or suggest the claim element. Since the combination does not teach or suggest the claim element, the combination does not establish obviousness. Applicant requests withdrawal of the rejection of claim 2 on this basis as well.

Claim 3 was rejected under 35 U.S.C. § 103 as being unpatentable over Hsu in view of Lin et al. (hereinafter "Lin"). Applicant respectfully traverses. The standards for establishing obviousness are set forth above.

Applicant previously argued that the Patent Office has not properly supported the motivation to combine the references. The Patent Office responds by arguing that the use of jitter buffers is not new and that one of ordinary skill in the art would be well aware that they are used to ensure data is received in proper order and to provide more reliable data. However, again, the Patent Office has not provided the evidentiary proof that shows why someone of ordinary skill in the art would combine jitter buffers with Hsu. The Federal Circuit and the MPEP are clear that merely because a combination is possible is not sufficient to establish obviousness. There must be some evidence which shows why someone of ordinary skill in the art would combine the references. Since the Patent Office still has not provided the requisite evidence, the motivation to combine the references remains improper. Since the motivation is improper, the combination is improper. Since the combination is improper, the rejection based on the combination is improper. Applicant requests withdrawal of the § 103 rejection of claim 3 at this time.

Even if the combination is proper, a point which Applicant does not concede, the combination does not establish *prima facie* obviousness. As explained above, Hsu does not

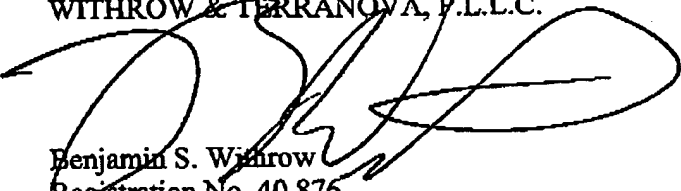
show moving processing of a given channel to a different processor as recited in claim 1. Lin does not cure this deficiency. Since the references individually do not teach or suggest the claim element, the combination of references cannot teach or suggest the claim element. Since the combination of references does not teach or suggest the claim element, the combination does not establish *prima facie* obviousness. Applicant requests withdrawal of the § 103 rejection of claim 3 for this reason as well.

Applicant requests reconsideration of the rejections in light of the amendments and remarks presented herein. Applicant earnestly solicits claim allowance at the Examiner's earliest convenience.

Respectfully submitted,

WITHROW & TERRANOVA, P.L.L.C.

By:


Benjamin S. Withrow
Registration No. 40,876
P.O. Box 1287
Cary, NC 27512
Telephone: (919) 654-4520

Date: September 8, 2005

Attorney Docket: 7000-429

CERTIFICATE OF TRANSMISSION

I HEREBY CERTIFY THAT THIS DOCUMENT IS BEING TRANSMITTED VIA FACSIMILE ON THE DATE INDICATED BELOW TO:

Examiner: Ali, Sved J. Art Unit: 2195 Fax: 571-273-8300

Taylor J. A. R. P. A. R. T.
Name of Sender

Ray L. D. A. R. T.
Signature

9/8/05
Date of Transmission